

Fair Political Practices Commission
MEMORANDUM

To: Chairman Randolph, Commissioners Blair, Downey, Huguenin and Remy

From: Theis Finlev, Executive Fellow
Scott Tocher, Senior Commission Counsel
Luisa Menchaca, General Counsel

Date: May 31, 2005

Subject: Adoption of Amendments to Regulation 18570 – Return of Contributions with Insufficient Donor Information

I. Executive Summary

Contributions with insufficient donor information must be returned to the contributor, pursuant to section 85700 of the Political Reform Act (“Act”).¹ The Commission will consider amendments to regulation 18570 clarifying a committee’s obligations when the returned contributions are not cashed by the original contributor and the contribution remains in the committee’s bank account.

The amendments to be considered provide that returned contributions which are not cashed by the original contributor within 90 calendar days from the date they are returned by the candidate or committee be turned over to the state General Fund or to a local general fund.

II. Background

Technical Assistance Division (TAD) has received inquiries from committees and candidates asking how to handle contributions that have been returned pursuant to section 85700 of the Act when the returned checks are not cashed by the original contributor.

Currently, section 85700 states that candidates and committees “shall return not later than 60 days of receipt” any contribution of \$100 or more for which the candidate or committee does not have the name, address, occupation, and employer of the contributor.

Regulation 18570 provides the following: 1) the 60-day period begins on the first day the candidate or committee obtains possession of the contribution; 2) a contribution which cannot be returned to the original donor be turned over to the state General Fund; and 3) the contribution is deemed returned when the contribution or its monetary

¹ Government Code sections 81000-91014.

equivalent is mailed, delivered or otherwise transmitted to the contributor. The regulation does not explain what to do in the event that the contribution is “deemed returned,” but the original contributor does not cash the returned contribution check.

III. Proposed Regulatory Action

Subdivision (c) presently states that if a contribution subject to regulation 18570 cannot be returned, the contribution “may” be turned over to the General Fund of the local jurisdiction if the contribution was made in connection with a local election. Staff proposes that this language be amended to state that such contributions “shall” be turned over to the local general fund. This amendment would eliminate ambiguity regarding whether the committee has the option of selecting either the state General Fund or the local general fund to receive the funds.

In addition, staff proposes to add subdivision (f) to declare that contributions which are returned by check, but are not cashed by the original contributor within 90 calendar days, are to be turned over to the state General Fund. Staff recommends that the contributions “shall” be turned over to the local General Fund if made in connection with a local election, consistent with subdivision (c).

How the Amendment of this Regulation Addresses the Problem

The proposed amendment to subdivision (c) of regulation 18570 eliminates ambiguity regarding the fate of contributions subject to regulation 18570 that cannot be returned to the contributor. Proposed subdivision (f) establishes a time line and process for complying with section 85700, in cases where the original contributor does not cash the check in the amount of the original contribution.

IV. Recommendations

Staff recommends that the Commission approve the proposed amendments to regulation 18570 for adoption at the July Commission meeting with the use of the term “shall” in both subdivisions “c” and “f”.

Attached:

Proposed amendments to regulation 18570